

STATE OF SOUTH DAKOTA
CONSULTING CONTRACT

2011 MAY 11 PM 3 41

11-2900-078

AGREEMENT made and entered into this 9th day of May, 2011, by and between the Office of Attorney General, a state agency, 1302 East Highway 14, Pierre South Dakota 57501 (the "State") and **Zuercher Technologies LLC**, 3720 W. 69th Street, Suite 200, Sioux Falls South Dakota 57108, 605-274-6061. (the "Consultant").

The State hereby enters into this Contract for services with Zuercher Technologies LLC in consideration of and pursuant to the terms and conditions set forth herein.

1. The Consultant through previous contracts with the State developed the 24/7 Sobriety Program web based software which is used to operate on a day-to day basis the 24/7 Sobriety Program. The purpose of this Agreement to modify the software programming as set forth in the Work Plan. The Consultant will perform those services described in the Work Plan, attached hereto as Exhibit A and by this reference incorporated herein.

In performing services under this Agreement Consultant agrees to comply with Computer Security terms and conditions set forth in Exhibit B which is attached hereto and by this reference incorporated herein.

2. The Consultant's services under this Agreement shall commence on May 9, 2011 and end on June 30, 2011, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The Consultant will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.

4. The State will make payment for services upon satisfactory completion of the services. The **TOTAL CONTRACT AMOUNT** is an amount not to exceed \$20,350. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

A. Commercial General Liability Insurance:

The Consultant shall maintain occurrence based commercial general

Audit 5.12.11
Freestone 5.18.11

liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this Agreement or be no less than two times the occurrence limit.

B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

The Consultant agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.

C. Business Automobile Liability Insurance:

The Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than N/A for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. Consultant agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Consultant or the State to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Consultant's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

9. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

10. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

11. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

13. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

14. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. The Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Consultant will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

15. Consultant warrants that the software developed or purchased under this Agreement will be in compliance with the BIT Standards for security, file naming conventions, executable module names, Job Control Language, systems software version and release levels, temporary work areas, executable program size, forms management, network access, tape management and job stream procedures prior to the installation and acceptance of the final project. BIT hardware and software standards can be found at <http://www.state.sd.us/bit/bitservices/standards/>.

16. Consultant hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Consultant in connection with its performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by the Consultant without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

Consultant hereby agrees to provide State for safekeeping, a copy of source code for any system that is developed or maintained by the Consultant. The source code provided will be the latest version that currently runs in a production environment.

This section is not intended to cover pre-existing software and other materials developed or otherwise obtained by or for Consultant or its affiliates independently of this Agreement. Software tools and toolkits known as "ReportLab", "ZToolkit", "Python ZToolkit", and "CherryPy" are preexisting and as such are not covered under section 16 of this agreement. Nothing in this section will be construed to interfere with Consultant's or its affiliates' ownership of these pre-existing materials.

The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by the Consultant or jointly by the Consultant and the Agency, may be used by either party without obligation of notice or accounting.

17. The Consultant certifies that neither Consultant nor its principals are presently debarred, suspended, proposed for debarment or suspension, or declared ineligible from participating in transactions by the federal government or any state or local government department or agency. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

18. Consultant agrees to comply with the Confidentiality Provision attached hereto as Exhibit C and by this reference incorporated herein. The Consultant and Consultants officers and employees will also comply with the terms of the Confidentiality Agreement with the State that allows Consultant access to confidential criminal justice information in performing services under this Agreement.

19. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to Jamie Freestone on behalf of the State, and by Micheal Zurcher, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination

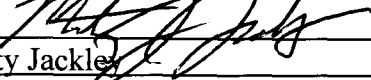
shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

20. In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

21. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

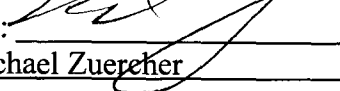
In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

BY: 
Marty Jackley
Attorney General, South Dakota
Office of the Attorney General

5/11/11
(DATE)

CONSULTANT

BY: 
Michael Zuercher
President

5/6/11
(DATE)

- Kay McLain (605) 773-3215 can provide additional information regarding this contract.
- This will be paid from DCI General Funds.

EXHIBIT A

STATE OF SOUTH DAKOTA CONSULTING CONTRACT ZUERCHER TECHNOLOGIES LCC

WORK PLAN

24/7 Update Work Product

Updated 4/28/11

Version 7 Changes

Fees increases

- U/A Testing Fees – \$10 for all new and active enrollments starting July
- Scram Deactivation and activation fees for all new and active enrollments starting July-\$40 each

New Fees

- Daily Participation fee of \$1 for all new enrollments on PBTs and all active enrollments on PBTs as of 7/1/11 (no other tests are affected at this time). This money will be state money, not county money.
- If a client is on twice a day PBT testing, they will be charged \$1 a day participation fee up to the first 40 days that they test on the program.
 - If client goes off PBT and then comes back on under same account, it will only charge what is left to be charged up to the \$40 cap. If that has been met already, nothing will charge
 - If a client also has a test type of SCRAM (or soon interlock), the PBT participation fee would not be charged
 - This fee should be charged each day that a test is taken up to the \$40 automatically, and should show as a different log in the PBT account.
 - If the client is behind on money, the money should be allocated to the counties fees before it goes to pay for this participation fee.
- Disbursing participation fee to State
 - This will be monitored by the county
 - If there is more than one county set as testing site, the enrolling testing site would be responsible for collecting the \$40.
 - If the client goes from the enrolling testing site to another testing site, the remaining \$40 that still needs to be collected should transfer over to the new primary testing site.
 - County will pay state on a quarterly basis
 - Should have a screen that the county can go to that will show them a running balance of what is owed to state and a list of where the fees are coming from. (a lot like the scram disbursements)
 - County will enter in what they paid and when it was paid to the state, and the balance will adjust according. Will need to have a separate payment box for them to be able to enter payment easily, not like it is on the scram disbursement admin page.

- Admin needs a place to mark on the payment made to Ag office that it was received.

New Features

- Special agency type for DPS (department of public safety) for scam
 - County still enters client, puts on and takes off bracelet
 - Activation and deactivation money still goes to county
 - Daily fees are charged the same as other accounts
 - Daily Fee Collection (this will be like how the scam fees are collected, just backwards)
 - User and participation fee will be collected and logged by the testing agency
 - Should have a screen that the county can go to that will show them a running balance of what is owed to state and a list of where the fees are coming from. (a lot like the scam disbursements)
 - County will enter in what they paid and when it was paid to the state, and the balance will adjust according. Will need to have a separate payment box for them to be able to enter payment easily, not like it is on the scam disbursement admin page.
 - Admin needs a place to mark on the payment made to Ag office that it was received.
 - \$1.00 participation fee goes testing agency, they can keep and do not have to send it to Ag office
- Fees need to be separated out per test type.
 - PBT
 - u/a
 - drug patch
 - scam activation/deactivation fees
 - Would like test type put in for activation and one for deactivation, so they don't have to write in the comments.
 - Each should have their own account like SCRAM does
 - All reports and summaries in place that deal with money need to be reprogrammed to show balances accordingly
- Admin needs to be able to combine accounts on the 24/7 website, instead of going through the backend
- Admin needs a way to enter or to inactivate judges
- Search function to search for participant number for admin and counties
- Admin need option to search for a receipt number within a specific county, as counties use same numbers as other counties
- Create a link for all admin functions and reports so that the admin can go back to the admin page without having to go back to the home page and click on admin.
- On Scram Account Disbursement page, next to the Amount text box, please place a reminder in red that if it is a PAYMENT made to the county, that it HAS to have a – (negative) in front of the dollar amount, otherwise it will not subtract from the account.
- Admin function to remove multiple scam fees at one time

- Function in place that will not allow counties to put on 1XDay pm testing and 1XDay am testing at the same time. Will also want to convert over the ones that are currently like that.

Cost

The cost for this project is \$19,400.

Statistical Reporting

Four statistical datasets will be created for RAND analysis.

Cost

The cost for this project is \$950.

Total Cost

The total cost for these projects is \$20,350. The annual maintenance agreement will increase by \$2,900/year.

The increase in maintenance will be billed on a prorated basis based on the number of days left between the time this project is completed and the 10/1/11 maintenance renewal date for 24/7.

Timeline

Provided that Zuercher Technologies receives an executed contract prior to Wednesday May 4, 2011 and DCI provides adequate personnel assistance for design and testing as needed, testing of version 7 will begin no later than Tuesday June 14th, 2011 and the project will be completed and installed prior to Friday July 1, 2011.

Exhibit B– Software Security Terms and Conditions

I. General

The Consultant agrees to maximize the security of the software development throughout the term of this Agreement including but not be limited to the following terms and conditions.

The Consultant agrees that the terms of the Agreement shall apply to Consultant's employees, as well as to third party contractors and subcontractors that will be employed by Consultant for the Contract.

The Consultant shall take all actions necessary to protect information regarding security issues and associated documentation, to help limit the likelihood that vulnerabilities are exposed.

Consistent with the provisions of this Agreement, the Consultant shall use the highest applicable industry standards including but not limited to the South Dakota Application Security Vulnerabilities document located at

<http://cybersecurity.sd.gov/docs/development/DevelopmentSecurityItems.pdf> .

The Top 25 software errors located at (<http://www.sans.org/top25-software-errors>) may also be referred to.

Continued compliance is required as these standards will change over time.

For secure software development practices to resolve critical security issues as quickly as possible. The "highest applicable industry standards" shall be defined as the degree of care, skill, efficiency, and diligence that a prudent person possessing technical expertise in the subject area and acting in a like capacity would exercise in similar circumstances.

Vulnerabilities, Risks and Threats

The Consultant agrees that he will strive to identify vulnerabilities, risks and threats as early as possible at any time during the software lifecycle. The software lifecycle shall mean from development, management, and maintenance updates or enhancements through retirement of such application.

The application / software solution must not present any of the security vulnerabilities listed on **Section A** of the South Dakota Application Security Vulnerabilities document located at (<http://cybersecurity.sd.gov/docs/development/DevelopmentSecurityItems.pdf>)

Items that fall under **Sections B** and **C** of the previously mentioned document must be discussed and vary depending on the application.

II. Development Environment

(a) Secure Coding

The Consultant shall disclose what tools are used in the software development environment to encourage secure coding.

(b) Configuration Management

The Consultant shall use a source code control system that authenticates and logs the team member associated with all changes to the software baseline and all related configuration and build files.

(c) Distribution

The Consultant shall use a build process that reliably builds a complete distribution from source. This process shall include a method for verifying the integrity of the software delivered to the State.

(d) Disclosure

The Consultant shall document in writing to the State all third party software used in the software, including all libraries, frameworks, components, and other products, whether commercial, free, open-source, or closed-source.

(e) Evaluation

The Consultant shall make reasonable efforts to ensure that third party software meets all the terms of this Agreement and is as secure as custom developed code developed under this agreement.

III. Testing**(A) Source Code**

The Consultant agrees that during the application development lifecycle process the source code shall be evaluated to ensure the requirements of this Contract including the security standards, policies and best practices are followed. The Consultant shall have a well-documented procedure and framework for conducting periodic code reviews.

(B) Vulnerability and a Penetration Test

The Consultant I agrees that prior to implementing into a "production" status, the application shall undergo vulnerability and a penetration test. The State reserves the right to request a vulnerability and performance scan on the application during the development lifecycle and post production. The State also reserves the right to perform its' own security vulnerability and/or penetration testing.

Post production, the Consultant shall perform contractually agreed upon security scans (with the most current signature files) to verify that the system has not been compromised during the testing phase.

The Consultant shall provide to the State in writing the results of the security scans and tests along with a mitigation plan.

The Consultant agrees that these vulnerabilities shall be mitigated within a pre-negotiated period.

Patches and Updates

The Consultant shall provide notification of patches and updates affecting security throughout the software lifecycle.

The Consultant shall apply, test, and validate the appropriate patches and updates and/or workarounds on a test version of the application before distribution.

The Consultant shall verify and provide written documentation that all updates have been tested and, prior to production, installed.

The Consultant shall verify application functionality, at the conclusion of patch updates, and provide documentation of the results.

Tracking Security Issues

The Consultant shall track all security issues uncovered during the entire software lifecycle, whether a requirements, design, implementation, testing, deployment, or operational issue. The risk associated with each security issue shall be evaluated, documented, and reported to the State as soon as possible after discovery.

IV. Delivery of the Secure Application

The Consultant shall resolve all security issues that are identified before delivery. Security issues discovered after delivery shall be handled in the same manner as other bugs and issues as specified in this Agreement.

Self-Certification

The Consultant shall certify to the State of South Dakota in writing that the software meets the security requirements, all security activities have been performed, and all identified security issues have been documented and resolved. Any exceptions to the certification status shall be fully documented with the delivery.

No Malicious Code

Consultant and any third party software developer shall warrant and certify that the software shall not contain any code that does not support a software requirement and weakens the security of the application, including computer viruses, worms, time bombs, back doors, Trojan horses, Easter eggs, and all other forms of malicious code.

V. Security Acceptance and Maintenance

Acceptance

The software shall not be considered accepted until the Consultant certification package is complete and all security issues have been resolved.

Investigating Security Issues

After acceptance, if security issues are discovered or reasonably suspected, Consultant shall assist the State in performing an investigation to determine the nature of the issue.

EXHIBIT C

STATE OF SOUTH DAKOTA CONSULTING CONTRACT ZUERCHER TECHNOLOGIES, LLC

CONFIDENTIALITY PROVISION

1. In order for Consultant to perform the computer programming services contemplated under the Agreement, Consultant may require access to confidential information.
2. Consultant acknowledges the State's need to keep confidential information it maintains, that is subject to various confidentiality statutes and legal privileges held by the State as well as other agencies, state agency clients, in-state and out-of-state government entities, and third parties.
3. Consultant agrees in order to protect the confidentiality and legal privileges associated with State computer usage and data storage that it and all of its officers, agents, and employees:
 - a. Will not, at any time, either directly or indirectly, make public, reveal, or communicate to any person, firm, or corporation or public entity, in any manner whatsoever, any information concerning any matters affecting or relating to confidential records or data that may be obtained in the course of performing this Agreement.
 - b. Will not reproduce or transfer in any way or manner or share with any person except as specifically authorized by the State any confidential data or information provided by the State.
 - c. Will not read, review, monitor, access, or attempt entry or other accession, of any data, documents, records, files (private or public), databases, communications, research trails, cookies, hard drives, servers, back up tapes or other back up mechanisms or facilities, on any State computer.
4. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.
5. Consultant will enforce the terms of this Confidentiality Provision to its fullest extent. Consultant agrees that remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision
6. Violation of this Confidentiality Provision is cause for immediate termination of this Agreement and could subject any violator to criminal prosecution in accordance with state law.
7. Neither this Confidentiality Provision, nor any part thereof, shall establish any privacy rights to, for or on the part of, any employee of the Consultant or State or waive any remedies against any such person for illegal, improper, or unauthorized use of the computers or any computer system or portion thereof.

STATE OF SOUTH DAKOTA



**OFFICE OF ATTORNEY
GENERAL**

1302 E. Highway 14, Suite 1
Pierre, South Dakota 57501-5070
Phone (605) 773-3215
FAX (605) 773-4106
www.state.sd.us/attorney

MARTY JACKLEY
ATTORNEY GENERAL

CHARLIE MCGUIGAN
CHIEF DEPUTY ATTORNEY
GENERAL

May 9, 2010

Richard Sattgast
State Auditor
500 East Capitol
Pierre, SD 57501

Re: Consulting Contract – Zuercher Technologies LLC

Dear State Auditor Sattgast:

Attached herewith is a Consulting Contract between the Office of Attorney General and Zuercher Technologies LLC dated May 9, 2011. This letter is to advise you that this is a contract for consulting and is in an amount of less than \$50,000.00. The contract is to modify a software program Zuercher Technologies LLC previously developed as is therefore the only practical source to provide the service. As such, the RFP provisions set forth in SDCL 5-18-55 thru 62 are not applicable.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jamie Freestone", with a long horizontal flourish extending to the right.

Jamie Freestone
Information Technology Team Leader

JF/rar
Enclosures

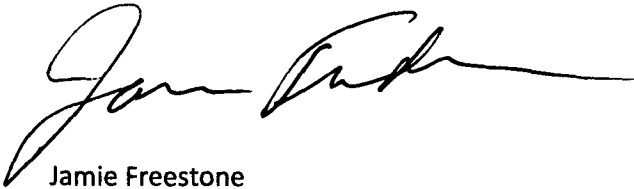
May 9, 2011

Marty,

This contract is an agreement for Zuercher Technologies LCC to modify the 24/7 Website, which was originally written and currently maintained by Zuercher Technologies LCC. Therefore, it is most cost effective and to our benefit to do renew this contract with them again. This contract was initiated by Art Mabry, Jeff Hallem and Paul backhand to modify the website to match the new rules and legislation going into effect for this program. This contract has been approved by Jeff Hallem and myself. Please let me know if there are any questions.

Once signed, please give to Judy Tobin to process

Thank you

A handwritten signature in black ink, appearing to read 'Jamie Freestone', with a long horizontal flourish extending to the right.

Jamie Freestone